#### Testimony Of: City Of Waukesha

Carol J. Lombardi, Mayor Katie Jelacic, Civil Engineer Paul Feller, Director Of Public Works Donald P. Gallo, Michael Best & Friedrich

### **Assembly Committee on Environment**

Tuesday, February 15, 2000 State Capitol, Room 415 Northwest

RE: SUPPORT FOR AB708 – EXPANDED APPLICABILITY OF THE "UMPIRE PROCESS" UNDER SECTION 292.35, WIS. STATS.

Under current law, Wisconsin communities face only two choices for cost recovery when cleaning up contaminated properties:

- 1. Superfund (CERCLA) under Federal Law, or
- 2. The local governmental unit negotiation and cost-recovery processes for contaminated property ("Umpire Process") under State Law

Without the statutory change set forth in AB708, the City of Waukesha and communities with similar properties, will be left with only one choice – Superfund! Unfortunately, under Superfund, the local businesses and persons who are defined as "potentially responsible parties" (PRPs) must not only pay their direct share(s), but must also pay an additional allocated portion of the "orphan" share to cover the non-solvent, bankrupt and dissolved entities who are not around to pay. This results in an unjust added burden on these parties. Further, the administrative and legal costs are usually much greater for the community and for the PRPs under Superfund.

However, under Wisconsin's "Umpire Process," these same parties pay only their direct share, while the orphan share is paid by the community or, in Waukesha's case, by the WDNR. This allows the community the opportunity to pay for the orphan share or find alternative funding for the orphan share.

To illustrate, a landfill identified as the "West Avenue Landfill" was closed and capped by Waukesha in 1978. In 1991, the DNR and EPA completed a site screening report concluding our community needed to proceed with clean-up procedures. Since 1991, many changes in rules, processes and deadlines have occurred, adding to the time and financial investment made by the

City of Waukesha, however, resulting in no "clean-up." Thus, the City of Waukesha is asking for legislative support in the passage of AB708.

Passage of AB708 will allow the City to implement its plans, bring a recreational use to the land and allow businesses bordering the area to grow our tax base with increased customer service. Waukesha has dollars to get the work done, arbitrage laws are closer than ever before to use the bonded funds for the project and the PRPs already know their obligation and have participated in a third-party, neutral allocation process.

In summary, passage of AB708 will:

- Expand the applicability of a state-based, less expensive process for municipalities to "cleanup" contaminated properties by removing a technicality.
- Allow communities to negotiate with their corporate citizens rather than engaging them in litigation.
- Protect the environment and groundwater sources from contamination more efficiently.
- Create opportunities for municipalities to utilize abandoned, unproductive land.
- Allow communities to recycle contaminated land into useable greenspace available for parks and athletic fields.

## **1999 ASSEMBLY BILL 708**

February 2, 2000 – Introduced by Representatives Jensen, Vrakas, Pettis, Kelso, Stone, Gundrum, Kedzie, Ladwig, Owens, Duff, Hoven, Olsen, Walker, Staskunas, Musser, Kreibich, Sykora, Spillner, Albers, Porter, Turner and Kreuser, cosponsored by Senators Wirch, Huelsman and Schultz. Referred to Committee on Environment.

AN ACT to renumber and amend 292.35 (2); and to create 292.35 (1) (am) and 292.35 (2) (b) of the statutes; relating to: applicability of the local governmental unit negotiation and cost-recovery process for contaminated property.

## Analysis by the Legislative Reference Bureau

Current law authorizes a local governmental unit that owns property that is contaminated with hazardous substances to initiate a process for negotiating about how the contamination will be remedied and how much the various parties that are responsible for the contamination will contribute toward the investigation and remedial action costs. The negotiations are conducted by an umpire. If an agreement is reached, it is binding on the parties. If an agreement is not reached, the umpire makes a recommendation that may be accepted or rejected by the parties. If the local governmental unit accepts the recommendation and another party rejects the recommendation, the local governmental unit may sue that party to attempt to recover a portion of the investigation and remedial action costs. If the local governmental unit recovers an amount equal to or exceeding the amount that the party would have paid under the umpire's recommendation, the local governmental unit may recover interest and litigation costs.

This bill expands the applicability of this negotiation and cost—recovery process so that it may be used by a local governmental unit that does not own a contaminated property if the local governmental unit commits itself to paying more than 50% of the

## **ASSEMBLY BILL 708**

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investigation and remedial action costs, less any financial assistance received, for the contaminated property.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of	Wisconsin, represented in senate and assembly, d	la
enact as follows:	,	_

1	Section 1. 292.35 (1) (am) of the statutes is created to read:
2	292.35 (1) (am) "Financial assistance" means money, other than a loan,
3	provided by a governmental unit that is not a responsible party to pay a portion of
4	the cost of investigation and remedial action for a site or facility.
5	SECTION 2. 292.35 (2) of the statutes is renumbered 292.35 (2) (intro.) and
6	amended to read:
7	292.35 (2) APPLICABILITY: GENERALLY (intro.) This section only applies to a site
8	or facility if the one of the following criteria is satisfied:
9	(a) The site or facility is owned by a local governmental unit.
10	(2c) APPLICABILITY: LANDFILLS. This section does not apply to a landfill until
11	January 1, 1996.
12	Section 3. 292.35 (2) (b) of the statutes is created to read:
13	292.35 (2) (b) A local governmental unit commits itself, by resolution of its
14	governing body, to paying more than 50% of the amount equal to the cost of
15	investigation and remedial action for the site or facility less any financial assistance
16	received for the site or facility.

(END)

# ASSEMBLY AMENDMENT, TO 1999 ASSEMBLY BILL 708

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 2, line 13: after "unit" insert "that owns a portion of the site or facility".
- 3 (END)